

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-3238

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United States of America,

Appellee,

v.

Dwight Dean Sundby,

Appellant.

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Appeal from the United States  
District Court for the District  
of North Dakota.

[UNPUBLISHED]

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Submitted: July 19, 2001

Filed: July 25, 2001 (Corrected 7/25/01)

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Before HANSEN, FAGG, and BEAM, Circuit Judges.

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PER CURIAM.

Dwight Dean Sundby appeals the sentence imposed on him following his convictions for drug trafficking. We affirm.

Sundby argues the government should be required to prove beyond a reasonable doubt he was responsible for the drug quantity attributed to him at sentencing. We disagree. The district court was entitled to base its drug quantity finding on the trial evidence. See United States v. Gonzalez-Rodriguez, 239 F.3d 948, 953-54 (8th Cir. 2001). Here, the drug quantity was charged in the indictment, the jury found Sundby

guilty of trafficking in the charged amount, and in an earlier appeal by the government, we found the trial evidence sufficient to sustain the jury's verdict. See United States v. Sundby, No. 00-1167, 2000 WL 636905 (8th Cir. May 18, 2000).

Sundby asks us to reconsider United States v. Aguayo-Delgado, 220 F.3d 926 (8th Cir.), cert. denied, 121 S. Ct. 600 (2000). Even if Aguayo-Delgado was applicable on these facts, only the court sitting en banc may reconsider the decision. See Bressman v. Farrier, 900 F.2d 1305, 1318 (8th Cir. 1990), cert. denied, 498 U.S. 1126 (1991). We affirm the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.